

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

MDL No. 2419  
Master Dkt. 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All actions.

**PLAINTIFFS' STEERING COMMITTEE'S NOTICE OF FILING  
JOINTLY PROPOSED ORDER GRANTING MOTION FOR ENTRY OF  
CASE MANAGEMENT ORDER ESTABLISHING ASSESSMENT  
PROCEDURES TO FUND COMMON BENEFIT ACCOUNT [ECF No. 790]**

The Plaintiffs' Steering Committee ("PSC") gives notice to the Court and all parties that, pursuant to the Court's instructions at the last status conference, the PSC hereby files a jointly proposed order granting the PSC's Motion for Entry of Case Management Order Establishing Assessment Procedures to Fund Common Benefit Account [ECF No.790]. The Chapter 11 Trustee has advised the PSC that he joins in the submission of the attached order.

The jointly proposed order is attached as Exhibit A. A redline, showing changes from the PSC's original proposed order based on input from the Court and the Trustee, is attached as Exhibit B.

The PSC tried to reach agreement with the Creditors Committee on a proposed order. But the Creditors Committee asked that portions of the proposed order be rewritten to (1) confirm that members of the creditors' committee are entitled to a portion of any common benefit fund and (2) change or create exceptions to the requirements long ago imposed by MDL Order #3.

As the Court noted, the motion seeks only to set aside funds, not create entitlements to

compensation for anyone:

It's simply a set-aside with the final judgment to be made later so that it ultimately becomes available. So, I don't understand why anybody should object to that.<sup>1</sup>

[T]his motion isn't asking for a distribution of this fund. It is simply asking for a set-aside so that money will be available for distribution on whatever basis is the appropriate basis to make such distribution to counsel.<sup>2</sup>

And, the Court observed, MDL Order #3 established the ground rules for common benefit awards:

I understand that certain rules as to how this was to be done and what needed to be done in order to be a proper claimant for the eight percent, or whatever, has already been made, and I would think that everybody who wants to make a claim to this money will need to follow those rules.<sup>3</sup>

I do believe that Judge Saylor's order made very early in this litigation should probably cover the manner in which ultimately distributions are done and the underlying reason for getting distribution should be in accordance with that order.<sup>4</sup>

The PSC therefore asks that the Court enter the attached proposed order.

Dated: July 18, 2014

Respectfully submitted,

**/s/ Kristen A. Johnson**

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<sup>1</sup> Hearing Transcript from June 19, 2014 Status Conference ("Tr.") at 46-47:22-1. An excerpt addressing this motion is attached as Exhibit C.

<sup>2</sup> Tr. at 48:18-22.

<sup>3</sup> Tr. at 47:2-6.

<sup>4</sup> Tr. at 50:8-12.

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*Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: July 18, 2014

**/s/ Kristen A. Johnson**  
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